G. R. S. IX-5]

Previous references. 1891–1892.

~~191~~.

(Courts)

File No. 3.

Serial Nos. 1–8

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1–8

Part B for January 1893.

SUBJECT.

Appearance of a Medical Officer in the Court of the Town Magistrate, Mysore.

W D 88—GPB—50,000—24-7-16

9
M-116

(General Serial No. 30)

Submitted
Mark 14/4/92

C.S.

189

From

OFFICE OF TH
575
14 APR. 92
10

SURGEON & SANITARY COMMISSIONER WITH THE GOVT OF MYSORE * OFFICE OF CLINICAL
No. 947
DATE 13-4-92
BANGALORE

To

Dated 12/87

Despatched

Received

The Chief Secretary to the Government of Mysore
Bangalore.

Enclosures No.

General No.
No.

Sir,

I have the honor to forward herewith the enclosed for the orders of Government in the matter. In my opinion the action of the Magistrate is contrary to custom in requiring the presence of the Civil Surgeon in Court to confirm verbally his written Certificates on that of the Apothecary.

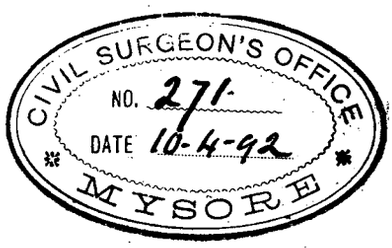
Prolonged examination is frequently necessary in cases of insanity & where it is a medico-legal character on which there is often no scientific basis, the general intelligence can be accurately ascertained.

I have the honor to be
Sir
Your most obedient servant
D Nicholson
Surgeon & Sanitary Commissioner with the Govt of Mysore

Copy to Dy C— for any remarks he may think called for — The Govt is not acquainted with the circumstances of individual cases which should be known to the Civil Surgeon

Drafted
M.K. 20/4

I have the honor to forward herewith a letter dated 9th April 1892 from the Civil Surgeon Bangalore & the enclosures noted in the margin on the subject of the Civil Surgeon's duties in connection with Inquests.



(1)

The Senior Surgeon and Sanitary Commissioner with the Government of Mysore

Bangalore

Sir,

I have the honor to inform you that a man who was pronounced by me on the 23rd March 1892 as a fit and proper person to be detained in a lunatic Asylum is still in Mysore in charge of the Police. Assistant Surgeon Ammuyum, who had been personally examined in connection with the Certificate above referred to, informs me that the Town Magistrate does not consider that the man is insane.

2. As similar cases of persons supposed to be insane are likely to be sent to the Civil Hospital for observation and Reports called for on their Sanity or otherwise if the Magistrate so in a position

to differ with the medical opinion expressed I fail to see the utility of granting such Certificates. In the present instance the Town Magistrate has, I consider, given unnecessary trouble in requiring me to give evidence before him in conformation of the Certificate granted as I had pointed out that the prisoner was under the observation of the medical Staff of the Hospital, and that the Assistant Surgeon would be deputed to give any particulars regarding him which might be necessary; The Magistrate accordingly ~~sent~~ a Summons to Mrs Cummyow, and at the same time requested me to endorse it, which I very naturally refused to do. The matter ought, I consider, to have ended with this instead of which the Magistrate still insists upon my appearing in Court merely to say that I signed the Certificate but I adhere to the course already taken of delegating such duties to my Subordinates.

During my Service of upwards of 20 years, the greater part of which has been passed in the Civil Department, I have

never Appl to the present occasion been
Summoned to confirm any Certificate
granted by me to the Magistracy or
Judicial authorities of the districts in
which I have served, and at this late
period of my Service I can hardly be ex-
-pected to conform to a ruling which,
to say the least, is not only most dis-
-tasteful to me but one which I consider
quite unnecessary

4. At the Head Quarters of other districts
of the Presidency the Medical Officers possessing
of the grade of Apth Surgeon and if his
evidence is deemed Sufficient in all cases
coming under his notice I think it
should be admitted that here in Burmah,
where the Civil Surgeon has a Similar Appoint-
-ment, the latter's personal attendance, when
required, ought to be dispensed

I have the honor to be
Sir
Your most Obedient Servant
A. R. Dickson

Ag Civil Surgeon
Myingyan

Dy ko 970
18/4/92

(General Serial No. 30.)

1892

From

(2)

C5
3-1891 To The Dy Commr.
Mysore Dist.

Serial No 2

Dated 21st April 92
Despatched 23
Received

Enclosures No. one

General No. 1287
No 35

Letter No. 947 of 13th April 92
from the Senior Surgeon
& Sanitary Commr. with the
Govt of Mysore, submit-
-ting letter No. 271 d/10-4-92
from the Civil Surgeon, Mysore
complaining against the
Town Magistrate, Mysore, regr-
-ing his presence in Court
to confirm verbally his
written certificates on that
of the Assistant Surgeon

Has the hon'ble to forward
copy of the above letter
and its enclosure for
any remarks the Deputy

Commissioner may
think called for. The
Government is not ac-
quainted with the
circumstances of the
individual case which
has led to this reference.

By order

Draft. [illegible]

Chief Secretary.

(General Serial No. 30.)

189

OFFICE OF THE
3035
11 JUN. 92
166
DEPARTMENT OF MYSORE

(3)

From The Commissioner
Mysore District

To The Chief Secretary to the
Govt: of Mysore

Dated 9
Despatched 10 June 1892
Received

Enclosures No. Nil

General No. 250
No.

Submits report regarding
Case of insanity in which
Civil Surgeon of Mysore has
Summoned to appear before
the Town Magistrate's Court

Ref. Mark "A"

Submitted
8/6
15-6-92

Dy Subsidiary Secretary, Asst Comm.
Mysore
22/6/92

Draft Submitted
27.6.92

cls
File No 3-1891
Serial No 3

31
15-6-92

9 (3)

No 250

Mysore Dy Commr's Office
Dated Mysore 9th June 1892.

From

A. Ranganauma Iyengar Esqre
B.A. B.L.
Deputy Commissioner

To

The Chief Secretary to the
Govt of Mysore

Sir

I have the honor to acknowledge your no 1287/35 (2) dated 29th April 1892, forwarding for my remarks Copies of letters from the Senior Surgeon to the Government of Mysore and the Civil Surgeon Mysore regarding a case of insanity.

2 In reply I beg to forward the entire records in Criminal Miscellaneous case no 10 of 1892 on the file of the Town Magistrate and to state that the facts of the case are as follows:—

3 One Lakshamamma complained to the Town Magistrate that her husband's mind had

become deranged and that he was at times violent and requested that he might be sent to the Lunatic Asylum at Bauxedoie. The Magistrate then sent for the alleged lunatic and sent him to the Medical Officer for observation. A medical certificate was issued signed by the Civil Surgeon to the effect that the said individual had "shown sufficient symptoms to consider him to be a fit and proper person to be sent to the lunatic Asylum."

4. The Magistrate then proceeded to hold an enquiry under para 5 of the Rules for lunatics, and summoned Dr. Dobson, by docket dated 1st April 1892, to appear before him as a witness on the 5th idem. The Civil Surgeon having apparently omitted to reply, a fresh summons was sent, in answer to which the Civil Surgeon addressed docket no. 256 dated 8th April returning the summons and stating that the Assistant

Surgeon would be able to give all information regarding the lunatic as he was under his immediate observation. The Town Magistrate again wrote that the attendance of the Civil Surgeon was also necessary but the latter declined to attend on the plea that the Certificate did not purport to be a Certificate of the Civil Surgeons opinion but merely a report communicating the result of the Assistant Surgeon's observation. The Magistrate then closed the case and ordered the man to be sent to the lunatic Asylum. These appear to be the main facts of the case. The records may be referred to as to the grounds on which the man was declared to be a lunatic fit to be confined in a lunatic Asylum.

5 As regards the points raised by the Civil Surgeon, I beg to remark that a Magistrate proceeding under para 5 is bound to take some medical evidence. The medical Certificate having been received by

the Civil Surgeon he was the proper Medical Officer for examination as to the condition of the alleged lunatic, as the Certificate in itself is not admissible in evidence, without proof, vide section 60 of the Evidence Act, also ruling in Aan Aatten Doss 9 W R 21 Prinsep's Commentaries on Criminal Procedure Code pag 269 -

6. Even after the examination of Dr. Arunagan Mod: Assistant Surgeon, the Magistrate seems to have felt considerable doubts as to the actual condition of the alleged lunatic and the evidence of Dr. Dobson would have been of material help in the disposal of the case. It may also be stated that irrespective of the question whether the Certificate was in effect Dr. Dobson's own certificate as to the sanity or otherwise of the alleged lunatic, or only a report of the Assistant Surgeon's observation

2

a Magistrate is empowered, under section 540 of the Criminal Procedure Code, to summon any person whom he thinks likely to throw light on the facts involved in a case and such person is bound to comply with the Magistrate's summons. The Civil Surgeon also argues in para 4 that, as in other Districts, the evidence of the Assistant Surgeons is admitted, even in Allypore the evidence of the Assistant Surgeon should suffice. There are Civil Surgeons in Shemoga and Chik Magalur and Assistant Surgeon's evidence is accepted in other Districts as they are the highest Officers available. It will not apply to Allypore where a Civil Surgeon is employed and as the best medical evidence procurable should be available in the interests of the proper administration of justice, it is my humble opinion that the Civil Surgeon's view be

accepted, great inconvenience will be felt in the disposal of serious cases such as murder culpable homicide &c

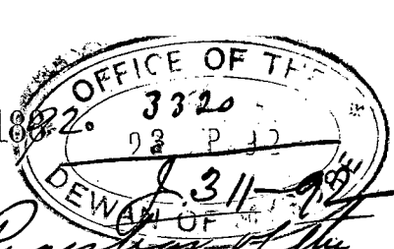
7. As regards the complaint of Dr Dobson that the Magistrate was disposed to differ from the opinion of the Medical Officer I need not say that the medical opinion is not according to Law conclusive evidence in such cases and that the Magistrate was competent nay bound to sift the same to the best of his light.

I have the honor to be
Sir,
Your most obedt Servt

Deputy Commissioner
Trans Indus

MPR Compd. W.R.

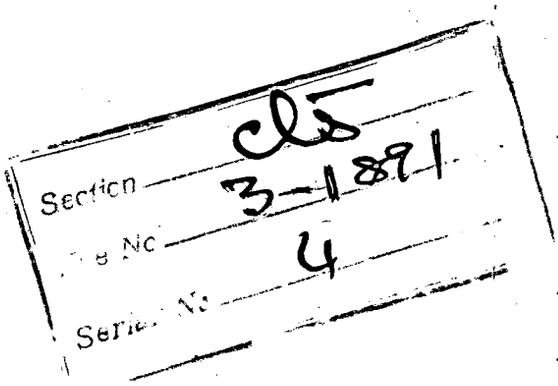
(General Serial No. 29.)



1892. J. 311-92

From The Registrar of the Chief Court, Bangalore (4)

To The Secretary to the Dewan of Mysore.



Dated 22nd Sept/92

Despatched 23rd

Received

Enclosures No

General No. 4791 } 188 —8.
No. 138 }

Requests that the record of Criminal case No 107 of 1892 on the file of the Town Magistrate, Bangalore may be caused to be sent to this Office for reference

Judl. or Pet. Br

Mark 23/9/1892

Sub

The record referred to may probably be found in correspondence relating to Dr Dobson, which was sent to the Chief Secretary on 28-6-92

28552

To the Personal Record

11/10

Please send the Record of criminal case No 107/92 referred to at the foot of this Note

The file desired and Record of Chief Court returned herewith

Received 1/10

Dy. written by H.J. Clerk of the Town Magistrate's Bench for information in this P.C. 12-10-92

No. 4791
138

From

Bangalore 22nd September 1892.

The Registrar of the
Chief Court of Mysore.

To.

The Chief Secretary to the
Dewan of Mysore.

Sir,

I am directed to request that you will be so good as to cause the record of Criminal Case No: 10 of 1892, on the file of the Town Magistrate of Mysore, which was forwarded to your office by that office, to be sent to this office for reference.

I have the honor to be,

Sir,

Your most obedient servant,

Registrar

For Registrar.

Mun

7

(5)

Camp No 80-81 & 22/10/92

Section Cl5
File No 3-1891
Serial No 5

Read letter from the Senior Surgeon and Sanitary Commissioner No. 947 dated 13th April 1892 forwarding letter from the Acting Civil Surgeon Mysore No. 271 dated 10th idem complaining of the action of the Town Magistrate of Mysore in having summoned him to give evidence in a case in which the sanity or insanity of a certain person was under enquiry

Read also letter from the District Magistrate of Mysore No. 250 dated 9th June 1892, submitting with his own observations thereon, the record in

his

H

Mio:
~~Lio~~ case No. 10 of 1892
on the file of the Town Magistrate
Mypore

Camp No. 80-81 Dy 22.10.92 ~~Order~~ H.

The acting Civil
Surgeon Mypore Complains
that as in the case referred to
above the alleged lunatic
was under the observation
of the Assistant Surgeon
Arrugadmoody, the Town
Magistrate ought to have
rest satisfied with his
(asst Surgeon's) evidence and not
have summoned him
(Civil Surgeon) as a witness that the
acting Civil Surgeons
evidence being merely
to confirm the certificate
granted by him was
unnecessary and

9

that it would be distasteful to him (Civil Surgeon) to be compelled to appear before Magistrates and Judges to confirm by his evidence the Certificates given in the Course of his duties

2. The Magistrate was quite within his rights in having required the Civil Surgeon to give evidence in the Case and on a Consideration of the papers read above, the Government are unable to say that the Magistrate abused the discretion vested in him by law

3 Certificates granted by Medical Officers excepting those issued by Chemical Examiners

6.

to Government regarding
which there are special
provisions in the Code
of Criminal Procedure
are by themselves in=
=admissible in evidence
without proof and the
law as it stands at
present, provides for
no exemption of a Medical
Officer from examination
as a witness in a Case like
the present. On the other
hand, it ~~evidently~~ gives
a Court ample powers
to summon any person
as a witness whose
evidence it may think
essential to the just-
decision of the Case, and
it is impossible for the
Government to say that
Dr Dobsons evidence
in question
in the Case was not essential

21

4. As regards Dr Dobsons Complaint that the Magistrate took the liberty of differing from the Medical opinion in the Case, it is observed that the law casts on the Magistrate the duty and responsibility of ~~D~~sifting and valuing the evidence produced before him according to the best of his lights and determining ~~the~~ the truth and that the Medical opinion like other professional opinion, however great the weight due to it may be is yet by itself not conclusive evidence.

With these Remarks, the Records of the Case received from the

the District Magistrate
will be returned

Camp
Vbcdgr

To, The Senior Surgeon. for information of the Chief Secretary
" The District Magistrate
Important with the Records of the Case
Dr Civil Surgeon
Dr 1 Feb

No. 5899.
J.T. 146—92 (6) 26-10-92 28

To,

The Registrar
The Chief Court of
Mysore

J. Regd. No. 309

CS
3-1891
6

Sir

As requested in
your letter No. 4791/138 of
the 22nd Ultimo, I
am directed to for-
ward herewith the
record in Criminal
case No. 10 of 1892,
on the file of the
Town Magistrate
of Mysore and to
request that it may
be returned to the
Town Magistrate,
Mysore when no
longer required.

P.T.O.

(General Serial No. 29.)

7

1892

OFFICE OF THE
575-5
18 NOV. 92
DEWAN

From The Registrar of the Chief Court, Mysore

To The Secretary to the Dewan of Mysore.

Dated 17th Nov. 92

Despatched 18th

Received

Enclosures No One

General No. 5952 } 188—8
No. 163

Section CS
File No 3-1891
Serial No 4

Forwarded for the information of Govt, copy of Proceedings passed by this Court in Revision case No. 268 of 1892

Inspr. Mysore
18/11

Read
19/11

The Govt has already expressed its views regarding to conduct of Dr Dobson. Copy of this Orys may be sent to the Chief Court for information

Submd
18.11.92

No. 5952/163 Rn: one

Bangalore
17th November 1892.

From,

The Registrar of the
Chief Court of Mysore.

To

The Chief Secretary
to the Dewan of Mysore

Sir

I am directed to forward for the information of government copy of Proceedings passed by this Court in Revision Case No 268 of 1892

I have the honor to be,
Sir,
your most obedient Servant

For Registrar.

JRK

67 Ex 67 1/a

Proceedings of the Chief Court of Mysore

Bangalore 17th November 1892

Revision Case no: 268 of 1892

Read record in Criminal Miscellaneous Case no: 10 of 1892 on the file of the Town Magistrate of Mysore, received with the Chief Secretary's letter No: 5899/1.F.146-92 dated 26th October 1892.

This Court observes that Dr Dobson was not right in having returned the Summons sent to him without serving it on himself, as required by the Town Magistrate

2. When the Magistrate considered it necessary in the interests of Justice to examine the Civil Surgeon he ought to have insisted upon the appearance of the latter as a witness. It is not obvious why the Magistrate expressed his inability to secure the attendance of the witness The Magistrate's conduct is not satisfactory.

3 The Magistrate says that he spoke to Doctor Dobson who was inexorable The law is no respecter of persons and the

Magistrate

Magistrate ought to have maintained the authority of the law by enforcing Doctor Dobson's attendance and taking steps, if necessary, to punish him for contempt.

A copy of these Proceedings will be forwarded to Government for information

By the Court
Signed A. Clapham
For Registrar.

Copy
A Clapham
For Registrar

8

29

No 12229 96th January 193.

To J.F. 146-92 Encl.

The Registrar of the

Chief Court, Mysore.

J Reg no 607

Sir

In reply to your letter No 595/163 dt 17th Nov 92, forwarding for the information of Govt copy of Proceedings passed by the Chief Court in Revision case No 268 of 1892, commenting upon the conduct of the Town Magistrate of Mysore in not having maintained the authority of law by enforcing Crimb. Mis: Dr Dobson's attendance in Case No 180 of 1892 on his file, I am directed to forward for the information of the Chief Court, copy of Govt Proc: Camp No 80-81 dated 22nd Oct 92 wherein the ~~Government has expressed its~~ views regarding ~~the conduct of Dr Dobson~~ matter has been taken notice of

I have &c

Chief Secretary

Section CS
No 3-1891
Serial No 8

MK
5/1/93

(General Serial No. 30.)

189

From

To

The Chief Secretary to the
Dewan of Mysore.

Dated

Despatched

Received

Enclosures No.

General No.
No.

References to be marked.

Mysore Govt. C. Press, Bangalore.—21-12-92.—20(